

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOSHUA D. LAMBERT,

Plaintiff,

v.

XLORMARA HEURTAS, ET AL.,

Defendants.

CASE NO. 19-5980 RJB - JRC

ORDER ADOPTING REPORT AND  
RECOMMENDATION

THIS MATTER comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 99. The Court has considered the Report and Recommendation (Dkt. 99), the Plaintiff's objections (Dkt. 103), the Defendants' response to the objections (Dkt. 106), and the remaining file.

The Report and Recommendation (Dkt. 99) should be adopted and the case re-referred to Judge Creatura for further proceedings. The Plaintiff's objections do not provide grounds to decline to adopt the Report and Recommendation. The Plaintiff objects to the dismissal, with prejudice, of a claim he asserted against Defendant Natasha House in an earlier complaint. Arguing that the dismissal should be without prejudice, he states that the prior dismissals of the claim "were not for failure to state a claim, and the court has not found that an amendment would be futile or implausible." Dkt. 103.

1 Contrary to the Plaintiff's assertions, the claims against Defendant House were dismissed  
2 for failure to state a claim. Dkt. 86. Plaintiff was given an opportunity to amend his complaint  
3 and told that failure to do so would result in dismissal of the claims against her if he did not do  
4 so. Dkt. 79, 86, and 88. Plaintiff did not do so, and this Report and Recommendation is the  
5 result. Dkt. 99.

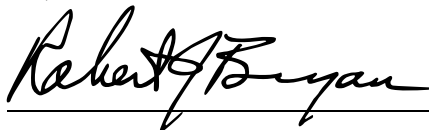
6 The Report and Recommendation (Dkt. 99) should be adopted. Plaintiff has been given  
7 several opportunities to act and has chosen not to do so. Although he states he should be allowed  
8 to bring the claim "later," he offers no grounds for this. The claims asserted against Defendant  
9 House should be dismissed with prejudice. The case should be re-referred to the Magistrate  
10 Judge.

11 **IT IS ORDERED THAT:**

- 12 • The Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura  
13 (Dkt. 99) **IS ADOPTED**;
- 14 • Plaintiff's claims asserted against Defendant House **ARE DISMISSED WITH**  
15 **PREJUDICE**.
- 16 • The case **IS RE-REFERRED** to Judge Creatura for further proceedings.

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
18 to any party appearing *pro se* at said party's last known address.

19 Dated this 28<sup>th</sup> day of September, 2020.

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21 ROBERT J. BRYAN  
22 United States District Judge  
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